

STUART KYLE DUNCAN ON IMMIGRATION

Highlights:

- Kyle Duncan has been a consistent opponent of immigrants.
 - Duncan argued that the Deferred Action for Parents of Americans (DAPA) was dangerous because “many criminals” were eligible for it.
 - Duncan authored a brief that called for the ending of the Deferred Action for Childhood Arrivals (DACA) because he surmised it was not enacted appropriately by congress and therefore, not legally binding to states.
 - Duncan wrote a brief to the Supreme Court that argued defense lawyers were not required to disclose to their clients that they could face deportation with a guilty plea.

Duncan Opposed Immigrants And Immigration In Court

DUNCAN FILED AN AMICUS BRIEF THAT CHALLENGED THE PARENTS OF AMERICANS AND LAWFUL PERMANENT RESIDENTS (DAPA) PROGRAM

Duncan Argued That DAPA Threatened Public Safety Because Many “Violent Criminals” Were Eligible For It.

According to Lambda Legal, “Kyle Duncan argued in an amicus brief that the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program threatened public safety because many ‘violent criminals’ would be eligible for it.” [Lambda Legal, [2/5/18](#)]

Duncan Said That “Whenever” DAPA Applications Were Granted There Was A “Substantial Likelihood” They Were Granting The Application To Someone Who Would Harm Citizens Of The U.S. According to Duncan's brief via SCOTUS Blog, “This is likely just the tip of the iceberg. Accordingly, whenever executive officials grant a DAPA application, there is a substantial likelihood that they are conferring legal status on a person who poses a risk of criminal activity—including violent crimes directed at citizens and residents of the United States.” [SCOTUS BLOG, No. 15-674, Accessed [6/24/24](#)]

DUNCAN ARGUED THAT DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) WAS NOT LEGALLY BINDING

Duncan Argued DACA Was Not Legally Binding Via An Amicus Brief On Behalf Of Florida’s Governor, Jeb Bush

Duncan Wrote A Brief On Behalf Of Jeb Bush That Questioned Whether Legal Immigration Status Could Be Granted Via Executive Order And Preempt State Law. According to Duncan's brief via SCOTUS Blog, “Brief Of Governor Jeb Bush As Amicus Curiae Supporting Petitioners Gene C. Schaerr S. Kyle Duncan. Can an executive order that purports to grant legal immigration status without congressional authorization preempt State law?” [SCOTUS Blog, No. 16-1180, Accessed [6/24/24](#)]

Duncan Wrote That The Constitution Did Not Permit Obama To Pass DACA. According to Duncan's brief via SCOTUS Blog, “The Constitution did not permit President Obama to override Arizona law by executive order. A program like DACA, which purports to change legal rights and (according to the Ninth Circuit) preempt State law has to be passed by Congress. Otherwise, it is not law. For similar reasons, a President’s unilateral announcement of policy cannot prevent States from going their own way. [SCOTUS Blog, No. 16-1180, Accessed [6/24/24](#)]

Duncan Argued That DACA Was Enacted Improperly By Congress And Therefore Non-Binding To The States

Duncan Argued That DACA Was Not Properly Enacted By Congress And Therefore Not Legally Binding.

According to the Alliance for Justice, “Duncan also fought President Obama’s Deferred Action for Childhood Arrivals (DACA). In an amicus brief supporting a petition for cert on behalf of Governor Jeb Bush and the State of Florida, in the case

Brewer v. Arizona Dream Act Coalition, Duncan argued that DACA was not properly enacted by Congress, was not legally valid, and thus, is not binding on the state of Arizona.” [Alliance for Justice, Accessed [6/24/24](#)]

DUNCAN FILED A BRIEF ARGUING LAWYERS WERE NOT OBLIGATED TO INFORM THEIR CLIENTS IF THEY FACED DEPORTATION AFTER A GUILTY PLEA

In Padilla vs. Kentucky, Duncan Argued That Defense Attorneys Had No Responsibility To Inform Their Clients If They Faced Deportation After A Guilty Plea. According to the Alliance for Justice, “Duncan also participated as counsel for amicus curiae in Padilla v. Kentucky, 130 S.Ct. 1473 (2010) while at the Louisiana Attorney General’s Office. The Supreme Court examined whether Padilla’s counsel misadvised him of the consequences of a plea deal that resulted in his deportation. The Court, in a 7-2 decision, held that counsel must inform her client about the direct consequences of a plea. Duncan’s amicus brief argued that Padilla’s counsel was not constitutionally deficient, claiming that deportation should not be a consequence about which counsel must inform a client.” [Alliance for Justice, [12/19](#)]

The Kentucky Supreme Court Concluded Postconviction Relief Was Not Guaranteed To Padilla Because Deportation Was A “Collateral” Consequence Of His Conviction

The Kentucky Supreme Court Denied Postconviction Relief To Padilla Because Deportation Was A “Collateral” Consequence Of His Conviction. According to Justia, “The Kentucky Supreme Court denied Padilla postconviction relief on the ground that the Sixth Amendment’s effective-assistance-of-counsel guarantee does not protect defendants from erroneous deportation advice because deportation is merely a ‘collateral’ consequence of a conviction. [Padilla v. Kentucky, 559 U.S. 356 (2010), Accessed [6/24/24](#)]

Duncan Filed A Brief That Urged Affirmance Of The Ruling

Duncan Filed A Brief On Behalf Of The State Of Louisiana In Padilla vs. Kentucky That Urged Affirmance. According to Padilla vs. Kentucky via the Library of Congress, “A brief of amici curiae urging affirmance was filed for the State of Louisiana et al. by James D. “Buddy” Caldwell, Attorney General of Louisiana, Kyle Duncan, Appellate Chief.” [Padilla vs Kentucky, Library of Congress, No. 08–651, Accessed [6/24/24](#)]

- **The Supreme Court Found That Lawyers Must Advise Their Clients On Deportation Consequences.** According to Padilla vs. Kentucky via the Library of Congress, “The majority stated that attorneys must advise defendants of deportation consequences even when the law is ambiguous, and they must specifically inform defendants that deportation is certain to result from a conviction when the law is unambiguous.” [Padilla vs Kentucky, Library of Congress, No. 08–651, Accessed [6/24/24](#)]